

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LIZA HOFFMAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

CASE NO. 07cv273 WQH (LSP)

**ORDER**

HAYES, Judge:

On February 9, 2007, Petitioner Liza Hoffman commenced this action by filing the Motion for Return of Seized Property. (Doc. # 1). On May 7, 2007, Respondent filed the Motion to Dismiss and for Summary Judgment, which is currently pending. (Doc. # 9). On February 21, 2008, Petitioner filed the Motion to Withdraw Motion for Return of Seized Property and for Voluntary Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure (“Motion for Voluntary Dismissal”). (Doc. # 31). The Motion states that “Petitioner no longer wishes to pursue litigation on this matter and is requesting this action be dismissed.” *Id.* On February 22, 2008, the Court issued an Order which provided that “Respondent shall file and serve any response to the Motion to Withdraw Motion for Return of Seized Property/ Motion for Voluntary Dismissal on or before February 29, 2008.” (Doc. # 32). On February 26, 2008, Respondent filed the Response in Support of the Motion for Voluntary Dismissal. (Doc. # 34). The response states that Respondents “do not oppose [Petitioner’s] Motion to Withdraw Motion for Return of Seized Property, and concurs with her

1 Motion for Voluntary Dismissal of this case under Rule 41.” *Id.*

2 Rule 41(a) of the Federal Rules of Civil Procedure governs the voluntary dismissal of  
3 an action in federal court. Rule 41(a)(2) provides that unless a plaintiff files a notice of  
4 dismissal before the opposing party serves either an answer or a motion for summary  
5 judgment, or the parties stipulate to the dismissal of the action, “an action may be dismissed  
6 at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed.  
7 R. Civ. P. § 41(a)(2). A court should grant a Rule 41(a)(2) motion for voluntary dismissal  
8 without prejudice unless the defendant will “suffer clear legal prejudice, other than the  
9 prospect of a subsequent suit on the same facts.” *Phillips v. Illinois Central Gulf Railroad*, 874  
10 F.2d 984, 986 (9th Cir. 1989). “Unless the order states otherwise, a dismissal under this  
11 paragraph (2) is without prejudice.” *Id.* The decision to grant or deny a motion pursuant to  
12 Rule 41(a)(2) is “within the sound discretion of the trial court and may be reviewed only for  
13 abuse of that discretion.” *Id.*

14 The Court notes that Respondent explicitly states that it “concurs” with Petitioner’s  
15 Motion for Voluntary Dismissal. *Response*, p. 2. The Court finds that Respondent will not  
16 suffer legal prejudice if the Court grants voluntary dismissal. The Court will exercise its  
17 discretion and grant the Motion for Voluntary Dismissal.

### 18 Conclusion

19 The Court **GRANTS** the “Motion to Withdraw Motion for Return of Seized  
20 Property/ Motion for Voluntary Dismissal Pursuant to Rule 41 of the Federal Rules of Civil  
21 Procedure.” (Doc. # 31). The above-captioned action is **DISMISSED without prejudice.**

22 DATED: February 29, 2008

23 

24 **WILLIAM Q. HAYES**  
United States District Judge